

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CRAIG D. HANSON,

Plaintiff,

v.

COUNTY OF KITSAP, WASHINGTON,  
DAVID LYNAM, KITSAP COUNTY  
FIRE MARSHAL, JOHN AND JANE  
DOE, EMPLOYEE-AGENTS AND  
FORMER EMPLOYEE AGENTS OF  
KITSAP COUNTY,

Defendants.

CASE NO. 13-5388 RJB

ORDER ON THE PARTIES'  
MOTIONS FOR PARTIAL  
SUMMARY JUDGMENT AND  
PLAINTIFF'S MOTION TO  
CONTINUE

This matter comes before the Court on the Defendants' Motion for Partial Summary Judgment Regarding Claims for Reemployment, Failure to Promote and Discrimination (Dkt. 77), Plaintiff's Motion to Continue Defendants' Motion for Partial Summary Judgment (Dkt. 89), and Plaintiff's Cross Motion for Partial Summary Judgment (Dkt. 97). The Court has considered the pleadings filed regarding the motions and the remaining file.

1 Plaintiff, a veteran of the United States Army, United States Marine Corps, and  
2 Washington Army National Guard, filed this employment case pursuant to Uniformed Services  
3 Employment and Reemployment Rights Act ("USERRA") 38 U.S.C. § 4301, *et seq.* and state  
4 law on May 22, 2013. Dkt. 1. In his second Amended Complaint, Plaintiff makes USERRA  
5 based claims for discrimination in employment based on his military service under 38 U.S.C. §  
6 4311, for retaliation under § 4311, failure to reemploy to the proper reemployment position  
7 under §§ 4312 and 4313; failure to provide proper benefits under § 4316; discharge without  
8 cause under § 4316; and for failure to properly pay employee pension and other benefits under  
9 §4318. Dkt. 45. Plaintiff also makes state law claims for violations of the Washington Law  
10 Against Discrimination ("WLAD"), Washington's Public Records Act, defamation and  
11 liquidated damages. *Id.* He seeks damages, attorneys' fees and costs. *Id.*

12 Defendants move for summary dismissal of Plaintiff's state and federal claims based on  
13 Plaintiff's allegations that: 1) Defendants failed to reemploy and promote Plaintiff, 2)  
14 Defendants denied Plaintiff the statutorily protected benefits of employment, 3) Defendants  
15 failed to pay Plaintiff's longevity bonus, 4) Defendants failed to contribute to Plaintiff's  
16 retirement plan, and 5) Defendants acted with discriminatory intent in failing to reemploy or  
17 promote Plaintiff. Dkt. 77.

18 On April 3, 2014, Plaintiff filed a motion to continue under Fed. R. Civ. P. 56(d)(2) to  
19 continue consideration of Defendants' partial motion for summary judgment until Defendants  
20 respond to his outstanding discovery which is not due until April 24, 2014. Dkt. 89. Defendants  
21 oppose this motion. Dkt. 94.

22 On April 14, 2014, Plaintiff filed a response to Defendants' partial motion for summary  
23 judgment and made a cross motion for summary judgment. Dkt. 97. Plaintiff argues that he  
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1 should be granted summary judgment on his claims that Defendants violated his USERRA rights  
 2 by: 1) failing to properly reemploy him in violation of §§ 4312 and 4313, 2) failing to give him  
 3 his 2012 longevity bonus in violation of §§ 4311 and 4316, 3) discharging him without cause  
 4 violation of § 4316(c), 4) failing to properly contribute to his pension in violation of § 4318 and  
 5 5) repeatedly discriminating against him due to his military service. *Id.* Plaintiff argues that  
 6 Defendants' motion for partial summary judgment should be denied as to whether Defendants  
 7 acted with discriminatory intent in failing to reemploy or promote Plaintiff. *Id.*

8 Defendants filed a reply to their summary judgment motion and state that they will file a  
 9 response to Plaintiffs' cross motion for summary judgment on May 5, 2014 in accordance with  
 10 Western District of Washington R. Civ. P. 7(d)(3). Dkt. 105. Defendants further argue that their  
 11 motion should be granted. *Id.*

12 Although it is not yet ripe, on April 10, 2014, Defendants filed a Motion for Partial  
 13 Summary Judgment regarding Hostile Work Environment, Constructive Discharge and  
 14 Retaliation. Dkt. 90. This motion is noted for consideration of May 2, 2014. *Id.*

15 This case is set to begin trial on August 18, 2014. Dkt. 30.

16 This opinion should first consider the Plaintiff's motion to continue and then the  
 17 remaining motions.

#### 18 **PLAINTIFFS' MOTION TO CONTINUE**

19 Under Fed. R. Civ. P. 56(d):

20 If a nonmovant shows by affidavit or declaration that, for specified reasons, it  
 21 cannot present facts essential to justify its opposition [to a motion for summary  
 22 judgment], the court may: (1) defer considering the motion or deny it; (2) allow  
 23 time to obtain affidavits or declarations or to take discovery; or (3) issue any other  
 24 appropriate order.

1 A party requesting relief pursuant to Rule 56(d) “must identify by affidavit the specific  
2 facts that further discovery would reveal, and explain why those facts would preclude summary  
3 judgment.” *Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006).

4 Plaintiff’s motion to continue under rule 56(d)(2) (Dkt. 89) should be granted. Plaintiff  
5 has identified sufficient “specific facts that further discovery would reveal, and explain why  
6 those facts would preclude summary judgment.” *Tatum*, at 1100. Defendants’ Motion for  
7 Partial Summary Judgment Regarding Claims for Reemployment, Failure to Promote and  
8 Discrimination (Dkt. 77) should be continued and renoted for May 9, 2014. Although parties  
9 have filed a response and reply to this motion, parties may file supplemental briefing, if they feel  
10 it is necessary, of two pages or less on or before May 9, 2014.

#### 11 **REMAINING MOTIONS**

12 Moreover, Plaintiff’s Cross Motion for Partial Summary Judgment (Dkt. 97) and  
13 Defendants’ Motion for Partial Summary Judgment regarding Hostile Work Environment,  
14 Constructive Discharge and Retaliation (Dkt. 90) are related to Defendants’ Motion for Partial  
15 Summary Judgment Regarding Claims for Reemployment, Failure to Promote and  
16 Discrimination (Dkt. 77). Each of these motions should be renoted to be considered on May 9,  
17 2014. Responses and replies should be filed in accord with the federal and local rules.

18 Parties are strongly encouraged to limit their briefing to only necessary issues. Briefing  
19 filed to date has been somewhat repetitive.

#### 20 **ORDER**

21 It is **ORDERED** that:

- 22 • Plaintiff’s Motion to Continue Defendants’ Motion for Partial Summary  
23 Judgment (Dkt. 89) **IS GRANTED**;

- 1 • Defendants' Motion for Partial Summary Judgment Regarding Claims for  
2 Reemployment, Failure to Promote and Discrimination (Dkt. 77) **IS RENOTED**  
3 **TO MAY 9, 2014;**
  - 4 ○ Parties may file supplemental briefing to this motion, if they feel it is  
5 necessary, of two pages or less on or before May 9, 2014;
- 6 • Plaintiff's Cross Motion for Partial Summary Judgment (Dkt. 97) **IS RENOTED**  
7 **TO MAY 9, 2014;** and
- 8 • Defendants' Motion for Partial Summary Judgment regarding Hostile Work  
9 Environment, Constructive Discharge and Retaliation (Dkt. 90) **IS RENOTED**  
10 **TO MAY 9, 2014.**

11 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
12 to any party appearing *pro se* at said party's last known address.

13 Dated this 22<sup>nd</sup> day of April, 2014.

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15 ROBERT J. BRYAN  
16 United States District Judge  
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